

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, November 12, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Tracy Corr, Dennis Scheer, Michael Cornelius, Chris Hove, Maja V. Harris, Jeanelle Lust and Lynn Sunderman (Kent Weber absent); David Cary, Steve Henrichsen, Brian Will, Paul Barnes, Christy Eichorn, Ed Zimmer, Jean Preister and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Chair Jeanelle Lust called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes for the regular meeting held October 29, 2014. Hove moved approval, seconded by Cornelius and carried 7-1: Cornelius, Beecham, Corr, Harris, Scheer, Hove and Lust voting 'yes' (Sunderman abstained; Weber absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 12, 2014

Members present: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust; Weber absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 14016; COUNTY SPECIAL PERMIT NO. 14044; and SPECIAL PERMIT NO. 14046.**

There were no ex parte communications disclosed.

Items 1.1, Special Permit No. 14016, and 1.2, County Special Permit No. 14044, were removed from the Consent Agenda and had separate public hearing.

Beecham moved approval of the remaining Consent Agenda, seconded by Hove and carried 8-0: Sunderman, Beecham, Cornelius, Corr, Harris, Scheer, Hove and Lust voting 'yes' (Weber absent).

Note: This is final action on Special Permit No. 14046, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

SPECIAL PERMIT NO. 14016
TO CONSTRUCT AN 88 FT. WIRELESS FACILITY,
ON PROPERTY GENERALLY LOCATED AT
4749 NORMAL BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 12, 2014

Members present: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust; Weber absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda due to a letter received in opposition.

Staff presentation: **Brian Will of Planning staff** explained that this is an application for a personal wireless facility in the long term; in the short term it will be a cell tower. The site is located at South 48th Street and Normal Blvd., southwest of the intersection at the U-Stop service station.

There are two waivers associated with this application, including the fall zone. Will advised that all wireless facilities are supposed to be located half the height of the tower from all lot lines. In this case, that distance would be 44 feet. When this application was originally submitted, the applicant was having difficulty locating the tower on the site due to the Antelope Creek drainage easement along the south side of the property. That 60' easement extends onto the property, preventing any sort of improvement within that easement. To resolve this issue, the tower site has been moved north and closer to the west lot line because the driving aisles of the service station need to remain open. The location of the tower is now about 41 feet from the building to the west, with the fall zone being 44 feet from the tower to the property line. The intent of the fall zone is to protect adjacent buildings and property. In this case, the staff believes it is appropriate to grant the waiver as there are really no improvements in the fall zone.

With regard to the waiver of the landscape requirements, Will advised that the design standards require that wireless facilities shall have a 70% screen from the ground to 8 feet in height, with 50% or more of the trees growing to mature height of 35 feet or more. Will pointed out that there have been several cases around the city where this standard has been waived on a case-by-case basis. In his case, the applicant is requesting to construct a privacy fence at least 7 feet in height surrounding the lease area with shrubs that grow to at least the same height. The staff finds this to be an appropriate waiver request based

upon the amount of vegetation growing to that height at this location. The condition of approval has been modified to require the applicant to show the fence proposed, but that there shall be a 7 ft. tall evergreen screen around that fence.

Lust inquired as to the location of the opposing party. Will stated that it is the commercial building directly adjacent to the west. The tower would be 41 feet from that property line. The fall zone would have been 44 feet. The height of the tower is the tower plus any lightning rod or antenna at the top. In this case, it would be measured at 88 feet.

Hove inquired as to the purpose of the fall zone being half of the tower height. Will explained that the fall zone acknowledges that these towers do not fall like a tree when it is cut at the base. The top will collapse or fall in a much closer radius to the tower itself. The staff report contains a letter from an engineer which talks about the fall zone and there has been no report of any collapsing or falling of the towers here in the City.

Lust observed that the adjacent commercial building is within 3 feet of the fall zone. Will explained that the fall zone is measured from the tower to the lot lines. It is about 41 feet to the building. The fall zone is 44 feet, and the applicant is requesting that waiver. The fall zone is only 8 feet away from the lot line. It is approximately 41 feet from the tower to the building.

Harris referred to the reference to a minimum safety factor of 25% in the engineer's letter. What does that mean? Will deferred to the applicant.

Sunderman asked whether this tower affects the adjacent property owner's ability to use his property. Can he expand his building? Will does not believe this tower threatens the ability to do anything to the adjacent property with respect to the zoning ordinance. There is no regulation that carries over onto his property.

Beecham inquired whether there is access to this property from the road on the south edge. Will referred to the map, explaining that the white strip shown on the map is actually the concrete lining in the creek. There are two or three access driveways from 48th Street and from Normal Boulevard.

Beecham asked Will to explain the issue with the drive aisle. Will stated that the tower had to be moved in order to not interfere with the drive aisles of the service station. The 60' easement associated with the creek comes onto the property, within which you cannot have any improvements or structures. Beecham wondered whether the driving aisles are allowed in the easement area. Will indicated that there can be pavement and they may even be able to park vehicles on it. It is just a structure or foundation that is not allowed.

Beecham then inquired whether there is room to put the structure between the building and the easement. Will deferred to the applicant, but stated that there is always a balancing act or sort of trade-off on such a visible intersection. There is a lot of B-1 zoning in this

area and a little bit of P Public Use zoning and Office zoning. It sort of becomes a trade-off. There may have been some other locations considered, but the applicant is being mindful of the intersection to reduce the visual impact by keeping the tower to the back of the property as much as possible.

Harris inquired whether there are other towers in the City similar to this one that have been allowed to waive the fall zone. Will responded that there have been waivers granted to the landscaping and the fall zone. The staff would be more hesitant to approve the waivers if the tower were being located next to residential uses. But, in commercial areas like this where we have signs, billboards, power poles, commercial buildings, etc., it does not seem to be an issue of being close to a neighborhood.

Proponents

1. Mark Kohler, SMJ International, testified as the applicant. He stated that they have worked on this project for a long time. He advised that the property upon which the tower is being located is a functional auto repair shop and they need to be able to continue their business. There are parked cars on the edges of the property. The applicant does not want to disrupt that traffic flow.

Kohler also advised that the creek easement was not recorded, thus the applicant was not aware it existed until further along in the process. The applicant did relocate the tower with respect thereto.

Kohler also noted that the opposing property is currently a locksmith-type company. As far as a decrease in the value of the opponent's property, Kohler stated that he has done research and spoken to several commercial real estate agents in Lincoln with vast experience, and they have all assured him that in a commercial business district, a cell tower next door is not negative and has no effect at all on the property value. With regard to the concern about the fall zone, the tower manufacturer, with an engineer's stamp, says in the rare occasion that something could happen, the tower is basically going to fall in half. It is designed to collapse upon itself. They do not anticipate that a collapse would even go on the property and much less hit the building. The applicant does carry insurance for any such risk.

Kohler also stated that part of the reason this location was chosen was to keep as far away from any residential property as possible. In searching for a location in this general commercial area, they did check with the Parks Department, who declined their request because it was closer to residences on the other side of 48th Street. There are two large billboards on the property now and there are also power poles, so the applicant believes this solution blends in relatively well. The property also consists of a stealth tower put up by Sprint quite some time ago. The applicant would liked to have collocated on that existing tower but it is currently full. The applicant has worked with staff to minimize the look of the tower by bringing the antennae closer to the pole. They do wish to keep the

tower back from the property lines to minimize any visual impact to traffic going by and any commercial businesses in the area.

As far as visual impact to the neighbor to the west, Kohler showed a photo depicting that there are currently no windows of that locksmith business building that will face the tower site.

Kohler noted that all of the engineering data is based on national standards. The 25% safety zone means they go over and above the national standard to make it stronger to avoid failure. It is an added safety zone.

Scheer inquired whether the applicant could provide the coverage desired with a pole height less than 80 feet. Kohler responded that 80 feet was the minimum to be able to clear any obstacles in the area. This is a capacity site for data versus a coverage site. Scheer again asked whether the pole could be 80 feet instead of 88 feet – can you get the total height down to 80 feet? Kohler reiterated that with 80 feet, they start running into obstacles, such as the billboard. This (88 feet) is the lowest they can go. There is a certain point where you are losing what you are trying to do by going lower.

Hove inquired about any statistics on the safety of the tower. Kohler stated that in his experience, he has heard of only one tower coming down and that was in a tornado in the Cortland area. However, that was a guyed tower, and everything in his research shows that a guyed tower is much more likely to come down than monopoles. The monopoles are like the towers the electric company uses on their high wires, such as along South Street. They are pretty stout and if something were to happen, it will fold in half.

There was no testimony in opposition.

Staff questions

With regard to the height waiver, Cornelius asked staff what would be too much to waive in this case. The neighborhood is commercial, but we are being asked to go below the 50% standard. What if it were 30 feet? Will observed that it is reviewed on a case-by-case basis and each one is different. In this case, we are talking about the potential of a tower coming down and causing property damage. It is the building we would be concerned about, but it is 41 feet as opposed to 44 feet – not that big of a difference. In conjunction with the fact that this property is zoned commercial and all the properties are developed commercially, staff does not believe it is a significant issue in this case.

If it is reviewed and waived on a case-by-case basis, Cornelius wondered why we have the standard at all. Will suggested that otherwise, we are left with just the setbacks of the district. Wireless facilities are allowed in any zoning district by special permit. It is the sensitivity to surrounding land uses. Having the fall zone requirement gives us a starting point which we would not have otherwise. This provides a larger safety cushion to start

with in those cases where we are concerned about the adjacent uses. There are ordinances across the country that do not have the fall zone. Just from the standpoint of applying for the special permit in any zoning district, he believes it is more prudent to have this fall zone regulation as a starting point versus having to start at a 10' side yard setback, for example.

Beecham assumed that the regulations or the building permit require the applicant to have some sort of insurance on a facility like this. Will did not know.

ACTION BY PLANNING COMMISSION:

November 12, 2014

Hove moved to approve the staff recommendation of conditional approval, seconded by Harris.

Scheer stated that he is uncomfortable with the aspect of the fall zone as alluded to by Cornelius. He is not uncomfortable about anything except the fact that we have the standard of 44' to the property line and this will only be 41' to a building, let alone the property line. He understands there is insurance, etc., but to have the fall zone established doesn't help us to justify this. It is exactly opposite if something were to happen.

Cornelius stated that he is also uncomfortable. He thinks that the argument that has been made for waiving in this case, while not very compelling, is at least valid. We do have a consideration here of the neighboring property and what it is and what it is used for; that the realities of the collapse is such that damage is actually likely to be minimal or none; and what we get with the initial 40 feet is a place to start, and then we can consider the surrounding area and make an informed decision. He wants to make sure that it is clear that we are not making a new standard here, and that we have considered the neighboring properties, etc.

Lust commented that she will base her decision on the engineering evidence that these towers are more likely to collapse on themselves rather than fall on adjacent property. And we have reasons for the standard so that we can avoid it in residential areas. It seems like an appropriate use in this particular commercial area. We are talking about a multi-national corporation that would be good for it if one of the towers fell over. It is not that troubling to her.

Motion for conditional approval carried 7-1: Sunderman, Cornelius, Corr, Harris, Beecham, Hove and Lust voting 'yes'; Scheer voting 'no'; Weber absent. This is final action, unless appealed to the City Council within 14 days.

COUNTY SPECIAL PERMIT NO. 14044
TO EXPAND AN EXISTING COMMERCIAL FEEDLOT
(POULTRY FARM) ON PROPERTY GENERALLY
LOCATED AT 7900 NORTH 148TH STREET, WAVERLY.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 12, 2014

Members present: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust; Weber absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda by Planning staff for further discussion.

Staff presentation: **Paul Barnes of Planning staff** explained that this is a request for a special permit to expand an existing commercial feedlot within the jurisdiction of Lancaster County on North 148th Street. The property is bisected between the City of Waverly jurisdiction and the Lancaster County jurisdiction. There is a building envelope showing where the expansion would occur, all of which is within the Lancaster County jurisdiction. None of this expansion is proposed in the Waverly zoning jurisdiction.

Barnes further explained that commercial feedlots are permitted in Lancaster County by special permit on AG zoned property, but we also need to consider the Future Land Use map in the Comprehensive Plan to see if the property is also shown as agricultural there. The property is shown as agricultural so it does meet the test of AG zoning today as well as a future land use in the Comprehensive Plan.

Barnes indicated that this application was removed from the Consent Agenda with the understanding that there may be representatives of Waverly wishing to speak. Otherwise, this application meets the requirements of the special permit section of the county zoning resolution.

Proponents

1. Bill Bevans, 7900 N. 148th Street, Waverly, appeared as the applicant. He noted that the application letter refers to this as a request for expansion of the poultry farm, but in his view it is a request to replace a very old, outdated open feedlot-type turkey feeding system with a much newer, more enclosed, easier on the eye, quieter and less odorous broiler operation.

The barns shown on the aerial are within the building envelope. Those barns are what is left of the old turkey feeding sheds. There were nine of them, with there being six left. The

others have been removed, mostly by storms. For the broiler facility, Bevans is in the process of upgrading – all of the old barns will be removed and there will be no turkeys outside.

Bevans stated that he is in the process of working through some concerns that the City of Waverly had. He did take the Mayor and Council members on a tour of a similar operation owned by Tecumseh Farms (Smart Chicken), which represents a concept of what he proposes to build. Residents can live fairly close to this type of operation and it does not produce foul odor or an excessive amount of noise.

Bevans stated that he is requesting approval of this application because it allows him to replace an outdated turkey feeding facility with a broiler operation that is totally enclosed. He is working with a partner, Smart Chicken, which is a very good neighbor selling a premium product. They will be raising organic, humanely raised, certified poultry, which means that the organic organizations will be doing an audit, with customers all over the country wanting to see how the high-priced chickens are raised. He assured that there will never be a horror story coming out of this operation.

Bevans advised that after taking the Waverly City Council members and the Mayor to see this farm, they had no further concerns about the possibility of this impacting future development of the City of Waverly. This will result in \$1.8 million of improvements on the tax rolls.

Hove inquired whether this adds capacity. Bevans stated that he does not have any broilers at the present time. He is adding a broiler operation where there was a turkey operation. He suggested that it will be an increase of what he has been doing the last couple of years, but it would be pretty similar to the turkey operation. They are brooding small turkeys in the two barns that will be removed and the turkeys will also be moved to another facility.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

November 12, 2014

Hove moved to approve the staff recommendation of conditional approval, seconded by Scheer.

Lust commented that it appears to be a well-run facility. She appreciates the effort that the Waverly City Council went through to investigate this matter. She is glad to hear they are going to be humanely raised animals. She will support the application.

Motion for conditional approval carried 8-0: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust voting 'yes'; Weber absent. This is final action, unless appealed to the Lancaster County Board of Commissioners within 14 days..

TEXT AMENDMENT NO. 14015
AMENDING TITLE 27 OF THE
LINCOLN MUNICIPAL CODE RELATING
TO PARKING IN THE CAPITOL ENVIRONS DISTRICT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 12, 2014

Members present: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust; Weber absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Ed Zimmer of Planning staff** explained that this text amendment would simply strike a section of the zoning code that creates a special permit condition overlaying the Capitol Environs District which requires two parking stalls per dwelling unit. This amendment came forward in relation to a specific project where the second floor of the Century House is being reverted to its original use for 14 studio apartments, requiring an additional 28 parking stalls under the current standards. The applicant can provide the parking required by their O-1 parking district, but it would be very hard for them to provide the additional 2 stalls per dwelling unit that would be required under the Capitol Environs District provision.

Zimmer pointed out that there was not discussion in 1996 about the Capitol Environs District requirement being a quadrupling of the requirement in O-1. There was discussion about a waiver by the City Council to 1 parking stall, but that would still be doubling the O-1 requirement.

Zimmer went on to state that O-1 and B-4 are a large part of the Capitol Environs District. Because of the location close to employment, entertainment and education centers, it seems like removing this provision and using the requirements of the underlying zoning district to determine the parking meets the different conditions found in the Capitol Environs more accurately.

Harris asked Zimmer whether he foresees that this change would do anything to decrease the availability of staff or visitor parking at the Capitol in the long term. Zimmer's response was that that is a matter that the state needs to address for its own purpose. The Nebraska Capitol Environs Commission (NCEC) would love to hear a long term parking plan from the state. It is hard to anticipate someone building a large residential complex without taking into account the parking that their tenants would wish for. He does not believe it would compete with the surface parking around the Capitol.

In reviewing the minutes of the NCEC meeting, Beecham commented that it appears that there was hope that this might in fact spur some redevelopment in the area. Zimmer

stated that we are seeing restoration of apartments in the Century House. There would be a parking requirement the same as there would be for the surrounding equivalent zoning. Zimmer clarified that this amendment removes only the special condition and not the underlying zoning requirements.

There was no testimony in opposition .

ACTION BY PLANNING COMMISSION:

November 12, 2014

Beecham moved approval, seconded by Corr.

Harris commented that having lived downtown, she is very familiar with the parking situation. To some extent she can understand why this was put into place, and at the time, it was probably as an incentive for downtown living. Now there is a different kind of urban living situation with walkability, high density, and high number of services nearby. She believes this is appropriate but she also supports the discussion in the minutes from the NCEC. There is a need to look at a parking lot or some increased parking at the Capitol.

Beecham agreed about the need for more parking around the Capitol. She likes this idea because it could encourage some more housing stock in this area. This area could really be “a jewel in Lincoln’s crown” and she will support this application.

Motion for approval carried 8-0: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust voting ‘yes’; Weber absent. This is a recommendation to the City Council.

TEXT AMENDMENT NO. 14016

**AMENDING TITLE 27 OF THE LINCOLN MUNICIPAL CODE
TO ALLOW MINI-WAREHOUSES AS A CONDITIONAL USE
IN THE B-5 PLANNED REGIONAL BUSINESS DISTRICT.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

November 12, 2014

Members present: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust; Weber absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** explained that this is an amendment to the code to allow mini-warehouses in the B-5 zoning district. The B-5 zoning district is a use permit district that requires a use permit with a very specific site plan and notes about how the development will occur.

The Planning Department was asked whether it would support mini-warehouses in the B-5 zoning district, as well as other zoning districts because there is a market right now for mini-warehouses. The staff believes that the reason this makes sense is because the B-5 zoning district is quite limited, being large regional shopping centers in many stages of development. Many of them have been around for a long time. Because B-5 is a use permit district, the staff has the ability to review them on a case-by-case basis to see how they might fit in with the development, including parking; distance from residential or similar uses; design standards that may apply, etc.

Eichorn went on to suggest that as we look for good infill and redevelopment projects, we also have to look at what the market is demanding.

Eichorn then relayed that the applicant has a specific site in mind and as staff looked at that site, it made sense that it would be a good re-use of the property. Specifically, the use that was brought to staff is a vacant office building just off of North Cotner in the Gateway Shopping Center. The existing building has a very slanted roof and a brick wall all the way around it. There has not been a lot of interest in using that building and since it has a fortress type look, perhaps it is a good place for mini-storage. It is separated by a busy street and there is a lot of parking surrounding the subject building before getting to other commercial buildings in the use permit.

Eichorn further explained that this text amendment would allow mini-warehouses in the B-5 zoning district as a conditional use, and the condition tied to that use would be an administrative amendment to the use permit in order to get approval to do the mini-warehouses in the B-5 district. The difference between a conditional use permit and a special permit is that a special permit would have to come back to the Planning Commission for each review.

Lust expressed some concerns about the specific language in the amendment and Eichorn explained that it has to do with how the “use groups” are constructed today. The conditional use chapter says that in B-4 you can have mini-warehouses by right with one condition. Structurally, this falls under that same heading and the condition is that you can do mini-warehouses in the B-5 conditioned upon approval of an administrative amendment. It is already a conditional use in the B-4 and this does not change any of the conditions of the B-4. This just restructures the language to accommodate both the B-4 and the B-5.

Corr sought to clarify that this would not allow outdoor storage such as boats, RV's, cars, etc. Eichorn stated that to be correct.

Proponents

1. Derek Zimmerman of Baylor Evnen Law Firm, 1248 O Street, Suite 600, appeared on behalf of the applicant. He expressed his agreement with the staff presentation. The mini-warehouse is a good use within the B-5 district. It is a low impact, low traffic use and there are not that many B-5 locations in the City.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

November 12, 2014

Cornelius moved approval, seconded by Scheer.

Cornelius commented that this appears to be a reasonable use of real estate that might not be used well otherwise. The example looked like a good choice.

Motion for approval carried 8-0: Sunderman, Scheer, Cornelius, Corr, Harris, Beecham, Hove and Lust voting 'yes'; Weber absent. This is a recommendation to the City Council.

There being no further business to come before the Commission, the meeting was adjourned at 2:10 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, December 10, 2014.